



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 220207-0042]

RIN 0648-BL13

Fisheries of the Northeastern United States; Framework Adjustment 34 to the Atlantic Sea Scallop Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement Framework Adjustment 34 to the Atlantic Sea Scallop Fishery Management Plan that establishes scallop specifications and other management measures for fishing years 2022 and 2023. Framework 34 would incorporate the new specifications-setting methodology and other changes developed by Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan into the 2022 fishing year specifications, as well implement measures for fishing years 2022 and 2023 to protect small scallops, promote scallop recruitment in the mid-Atlantic, and reduce bycatch of flatfish. This action would also address regulatory text that is unnecessary, outdated, or unclear. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource.

DATES: Comments must be received by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The New England Fishery Management Council has prepared a draft environmental assessment (EA) for this action that describes the proposed measures in

Framework Adjustment 34 and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of Framework 34 to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and an Initial Regulatory Flexibility Analysis (IRFA). Copies of the draft of Framework 34, the draft EA, the IRFA, and information on the economic impacts of this proposed rulemaking are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/framework-34-1>.

You may submit comments on this document, identified by NOAA-NMFS-NOAA-NMFS-2022-0009, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0009 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978-281-9233.

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The New England Fishery Management Council sets scallop fishery catch limits and other management measures through specification or framework adjustments that occur annually or biennially. The Council adopted Framework 34 to the Atlantic Sea Scallop FMP on December 9, 2021. The Council submitted a draft of the framework, including a draft EA, for NMFS review and approval on January 3, 2022. This action proposes to approve and implement Framework 34, which establishes scallop specifications and other measures for fishing years 2022 and 2023, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2022 and management measures to reduce bycatch of flatfish, and default specifications for fishing year 2023, as recommended by the Council.

On January 12, 2022, NMFS published Amendment 21 to the Atlantic Sea Scallop FMP (87 FR 1688). Amendment 21 makes several changes to the management of the Northern Gulf of Maine (NGOM) and limited access general category (LAGC) individual fishing quota (IFQ) components. Framework 34 would incorporate the new specifications-setting methodology and other changes developed in Amendment 21 into the 2022 fishing year 2022.

NMFS will implement these Framework 34 measures, if approved, as close as possible to the April 1 start of fishing year 2022. If NMFS implements these measures after the start of the fishing year, the default allocation measures currently established for fishing year 2022 will go into place on April 1, 2022. The Council reviewed the proposed regulations in this rule as drafted by NMFS and deemed them to be necessary

and appropriate as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACL), Annual Catch Targets (ACT), Annual Projected Landings (APL) and Set-Asides for the 2022 Fishing Year, and Default Specifications for Fishing Year 2023

The Council set the proposed OFL based on a fishing mortality (F) of 0.61, equivalent to the F threshold updated through the Northeast Fisheries Science Center's most recent scallop benchmark stock assessment that was completed in September 2020. The proposed ABC and the equivalent total ACL for each fishing year are based on an F of 0.45, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 56.7 million lb (25,724 mt) for 2022 and 51.1 million lb (23,200 mt) for the 2023 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2023 when the Council develops the next framework adjustment.

Table 1 outlines the proposed scallop fishery catch limits. After deducting the incidental target total allowable catch (TAC), the research set-aside (RSA), and the observer set-aside, the remaining ACL available to the fishery is allocated according to the following fleet proportions established in Amendment 11 to the FMP (72 FR 20090; April 14, 2008): 94.5 percent is allocated to the limited access scallop fleet (*i.e.*, the larger "trip boat" fleet); 5 percent is allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (*i.e.*, the smaller "day boat" fleet); and the remaining 0.5 percent is allocated to limited access scallop vessels that also have LAGC IFQ permits. Amendment 15 to the FMP (76 FR 43746; July 21, 2011) specified that no buffers to account for management uncertainty are necessary in setting the LAGC ACLs,

meaning that the LAGC ACL is equal to the LAGC ACT. For the limited access fleet, the management uncertainty buffer is based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which, using the updated Fs applied to the ABC/ACL, now results in an F of 0.39. Amendment 21 to the FMP modified the ACL flowchart to account for the scallop biomass in the NGOM as part of the legal limits in the fishery by adding biomass from the area into calculations of the OFL and ABC. This action moved the accounting of the NGOM ACL from only within the OFL into the OFL and ABC/ACL for the entire fishery. In addition, Amendment 21 created the NGOM Set-Aside to support a directed LAGC fishery (including NGOM and LAGC IFQ permitted vessels) in the NGOM Management Area.

Table 1--Scallop Catch Limits (mt) for Fishing Years 2022 and 2023 for the Limited Access and LAGC IFQ Fleets

Catch Limits	2022 (mt)	2023 (mt) ¹
ABC/ACL (discards removed)	25,724	23,200
Incidental Landings	23	23
RSA	578	578
Observer Set-Aside	257	232
ACL for fishery	24,865	22,367
Limited Access ACL	23,498	21,137
LAGC Total ACL	1,368	1,230
LAGC IFQ ACL (5 percent of ACL)	1,243	1,118
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	124	112
Limited Access ACT	20,365	18,318
NGOM Set-Aside	282	221
APL (after set-asides removed)	14,251	(1)
Limited Access APL (94.5 percent of APL)	13,467	(1)
Total IFQ Annual Allocation (5.5 percent of APL) ²	784	588
LAGC IFQ Annual Allocation (5 percent of APL) ²	713	534
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) ²	71	53

ABC/ACL (discards removed)	25,724	23,200
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¹ The catch limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2023 that will be based on the 2022 annual scallop surveys.

² As a precautionary measure, the 2023 IFQ and annual allocations are set at 75 percent of the 2022 IFQ Annual Allocations.

This action would deduct 1.275 million lb (578 mt) of scallops annually for 2022 and 2023 from the ABC for use as the Scallop RSA to fund scallop research.

Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.275 million lb (578 mt) allocation, NMFS has already allocated 153,834 lb (69,778 kg) to previously-funded multi-year projects as part of the 2021 RSA awards process. NMFS is reviewing proposals submitted for consideration of 2022 RSA awards and will be selecting projects for funding in the near future.

This action would also deduct 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 257 mt for 2022 and 232 mt for 2023. The Council may adjust the 2023 observer set-aside when it develops specific, non-default measures for 2023.

Open Area Days-at-Sea (DAS) Allocations

This action would implement vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.*, full-time, part-time, and occasional) for 2022 and 2023 (Table 2). Proposed 2022 DAS allocations are the same as those allocated to the limited access fleet in 2021. Framework 34 would set 2023 DAS allocations at 75 percent of fishing year 2022 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2023 specifications action is delayed past the start of the 2023 fishing year. The proposed allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeds its 2021 sub-ACL.

Table 2--Scallop Open Area DAS Allocations for 2022 and 2023

Permit Category	2022	2023 (Default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.50

If NMFS implements these Framework 34 measures after the April 1 start of fishing year 2022, default DAS allocations, which were established in Framework Adjustment 33 to the Scallop FMP (86 FR 27042; May 19, 2021), would go into place on April 1. Full-time vessels would receive 18 DAS, part-time vessels would receive 7.20 DAS, and occasional vessels would receive 1.50 DAS. The allocations would later be increased in accordance with Framework 34, if approved. NMFS will notify all limited access permit holders of both default and Framework 34 DAS allocations so that vessel owners know what mid-year adjustments would occur should Framework 34 be approved and implemented after April 1, 2022.

Changes to Fishing Year 2022 Sea Scallop Access Area Boundaries

For fishing year 2022 and the start of 2023, Framework 34 would keep Nantucket Lightship-South-Deep Access Area (NLS-S-D), Closed Area II (CAII), and Closed Area I Access Area (CAI) open as access areas. However, Framework 34 will not allocate any additional landings from CAI for the limited access fleet (see below).

Fishing Year 2022 Sea Scallop Closed Area Boundaries

Framework 34 would keep the Closed Area II-East (CAII-E) Closed Area closed to scallop fishing. This action would also close the New York Bight Scallop Rotational Area (Table 3) to scallop fishing to optimize growth of the several scallop year classes within the closure area and to support scallop fishing in years following the 2022 fishing year.

Table 3—New York Bight Scallop Closed Area

Point	N latitude	W longitude
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NYB1	40°00'	73°20'
NYB2	40°00'	72°30'
NYB3	39°20'	72°30'
NYB4	39°20'	73°20'
NYB1	40°00'	73°20'

This action would also close the Nantucket Lightship-West (NLSW) Scallop Rotational Area (Table 4). The Council is proposing to close this area to support the growth of this year class of small scallops in the absence of fishing pressure.

Table 4--Nantucket Lightship-West Scallop Closed Area

Point	N latitude	W longitude
NLSW1	40°43.44'	70° 20'
NLSW2	40°43.44'	70° 00'
NLSW3	40° 43.44'	69° 30'
NLSW4	40° 20'	69° 30'
NLSW5	40° 20'	70° 00'
NLSW6	40° 26.63'	70° 20'
NLSW1	40°43.44'	70° 20'

Mid-Atlantic Scallop Rotational Area Reverting to Open Area

Framework 34 would revert the Mid-Atlantic Scallop Rotational Area (MAAA) to part of the open area. This area was previously managed as part of the area rotation program, but it no longer meets the criteria for either closure or controlled access. This area would become part of the open area and could be fished as part of the DAS program or on LAGC IFQ trips. Because fishing year 2021 carryover access area fishing will continue in the MAAA until May 30, 2022, this area would not revert to open area until May 31, 2022.

Stellwagen Bank Scallop Rotational Area Reverting to NGOM Area

Framework 34 would revert the Stellwagen Bank Scallop Rotational Area to part of the NGOM. This area was closed in 2020 to protect a substantial number of small

scallops. Framework 34 would open this area to NGOM fishing because those small scallops have now been recruited into the fishery.

Full-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 5 provides the proposed limited access full-time allocations for all of the access areas for the 2022 fishing year and the first 60 days of the 2023 fishing year. These allocations could be landed in as many trips as needed, so long as vessels do not exceed the possession limit (also in Table 5) on any one trip.

Table 5--Proposed Scallop Access Area Full-Time Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2022 and 2023

Rotational access area	Scallop possession limit	2022 Scallop allocation	2023 Scallop allocation (default)
Closed Area II	15,000 lb (6,804 kg) per trip	30,000 lb (13,608 kg)	15,000 lb (6,804 kg)
Nantucket Lightship-South-Deep	15,000 lb (6,804 kg) per trip	15,000 lb (6,804 kg)	0 lb (0 kg)
Total		45,000 lb (20,412 kg)	15,000 lb (6,804 kg)

Changes to the Full-Time Limited Access Vessels' One-for-One Access Area Allocation Exchanges

Framework 34 would allow full-time limited access vessels to exchange access area allocation in 7,500-lb (3,402-kg) increments. The owner of a vessel issued a full-time limited access scallop permit would be able to exchange unharvested scallop pounds allocated into an access area for another full-time limited access vessel's unharvested scallop pounds allocated into another access area. For example, a full-time vessel may exchange 7,500 lb (3,402 kg) from one access area for 7,500 lb (3,402 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 15,000 lb (6,804 kg) from one access area for 15,000 lb (6,804 kg) allocated to another full-time vessel for another access area. One-for-one access area allocations for part-time

limited access vessels must occur in the increments of a possession limit, *i.e.*, 9,000 lb (4,082 kg).

Part-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 6 provides the proposed limited access part-time allocations for all of the access areas for the 2022 fishing year and the first 60 days of the 2023 fishing year. These allocations could be landed in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 6) on any one trip.

Table 6--Proposed Scallop Access Area Part-Time Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2022 and 2023

Rotational access area	Scallop possession limit	2022 Scallop allocation	2023 Scallop allocation (default)
Closed Area II	9,000 lb (4,082 kg) per trip	9,000 lb (4,082 kg)	9,000 lb (4,082 kg)
Nantucket Lightship-South-Deep	9,000 lb (4,082 kg) per trip	9,000 lb (4,082 kg)	0 lb (0 kg)
Total		18,000 lb (8,165 kg)	9,000 lb (4,082 kg)

Closed Area I Only for RSA and LAGC IFQ Trips

Because of the limited amount of biomass in the CAI to support a full limited access trip, Framework 34 will not allocate any landings from CAI to the limited access fleet. CAI will only be available for the LAGC access area trips and RSA compensation fishing.

Payback Measures for 2022 Default Poundage Allocations in MAAA

During the development of Framework 33 in 2020, the projected biomass in the MAAA was expected to be able to support a default trip in fishing year 2022. However, the 2021 scallop surveys observed an unexpected decrease in biomass in the MAAA and 2022 projections of exploitable biomass suggest that this area cannot support additional access area fishing in 2022. Framework 34 would not allocate effort into the MAAA, but instead would revert the MAAA to part of the open area. If NMFS implements these

Framework 34 measures after the April 1 start of fishing year 2022, default access area allocations, which were established in Framework 33 would go into place on April 1. Full-time vessels would receive 18,000 lb (8,165 kg) of MAAA allocation and part-time vessels would receive 7,200 lb (3,266 kg) of MAAA allocation. Because of this discrepancy, this action would set payback measures intended to disincentivize vessels from fishing in MAAA using 2022 default allocations.

If Framework 34 implementation is delayed, and a vessel fishes any of its fishing year 2022 default MAAA allocation established through Framework 33, that vessel would lose its CAII allocation established through Framework 34. This does not prohibit vessels from fishing the remainder of their fishing year 2021 MAAA allocation during the first 60 days of fishing year 2022. If Framework 34 is delayed, NMFS will notify all limited access permit holders of these payback measures and other fishing year 2022 default allocations.

LAGC Measures

1. ACL and IFQ Allocation for LAGC Vessels with IFQ Permits. For LAGC vessels with IFQ permits, this action would implement a 1,368-mt ACL for 2022 and a 1,230-mt default ACL for 2023 (see Table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. Framework 28 (82 FR 15155; March 27, 2017) changed the way the LAGC IFQ allocations are set from a direct percentage of the ACL to a percentage of the APL. The purpose of this change was to help ensure that the allocation of potential catch between the fleets is more consistent with the concept of spatial management by allocating catch to the LAGC IFQ fleet based on harvestable scallops instead of total biomass. Since Framework 28 was implemented in 2017, the LAGC IFQ allocation has been equal to 5.5 percent of the projected landings (5 percent

for LAGC IFQ vessels and 0.5 percent for LAGC IFQ vessels that also have a limited access scallop permit). The annual allocation to the LAGC IFQ-only fleet for fishing years 2022 and 2023 based on APL would be 713 mt for 2022 and 534 mt for 2023 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

If NMFS implements these Framework 34 measures after the April 1 start of the 2022 fishing year, the default 2022 IFQ allocations would go into place automatically on April 1, 2022. Because this action would implement IFQ allocations greater than the default allocations, NMFS will notify IFQ permit holders of both default 2022 and Framework 34 IFQ allocations so that vessel owners know what mid-year adjustments would occur should Framework 34 be approved.

2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits.

For limited access scallop vessels with IFQ permits, this action would implement a 124-mt ACL for 2022 and a default 112-mt ACL for 2023 (see Table 1). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits would be 71 mt for 2022 and 53 mt for 2023 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

3. LAGC IFQ Trip Allocations for Scallop Access Areas. Framework 34 would allocate LAGC IFQ vessels a fleet-wide number of trips in CAI and NLS-S-D for fishing year 2022 and default trips in the CAI for fishing year 2023 (see Table 7). The scallop catch associated with the total number of trips for all areas combined (1,071 trips) for fishing year 2022 is equivalent to the 5.5 percent of total projected catch from access areas.

Table 7--Fishing Years 2022 and 2023 LAGC IFQ Trip Allocations for Scallop Access Areas

Scallop access area	2022	2023 ¹
Closed Area I	714	357
Nantucket Lightship-South-Deep	357	0
Total	1,071	357

¹ The LAGC IFQ access area trip allocations for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

4. *NGOM Scallop Fishery Landing Limits.* This action proposes total allowable landings (TAL) in the NGOM of 661,387 lb (300,000 kg) for fishing year 2022 and 504,384 (228,785 kg) default NGOM TAL for fishing year 2023. This action would deduct 25,000 lb (11,340 kg) of scallops annually for 2022 and 2023 from the NGOM TAL to increase the overall Scallop RSA fund scallop research. In addition, this action would deduct 1 percent of the NGOM ABC from the NGOM TAL for fishing years 2022 and 2023 to support the industry-funded observer program to help defray the cost to scallop vessels that carry an observer (Table 8).

Amendment 21 developed landing limits for all permit categories in the NGOM and established an 800,000-lb (362,874-kg) NGOM Set-Aside trigger for the NGOM directed fishery, with a sharing agreement for access by all permit categories for allocation above the trigger. Allocation above the trigger (*i.e.*, the NGOM APL) will be split 5 percent for the NGOM fleet and 95 percent for limited access and LAGC IFQ fleets. Framework 34 would set an NGOM Set-Aside of 621,307 lb (281,820 kg) for fishing year 2022 and a default NGOM Set-Aside of 465,980 lb (211,365 kg) for fishing year 2023. Because the NGOM Set-Aside for fishing years 2022 and 2023 is below the 800,000-lb (362,874-kg) trigger, Framework 34 would not allocate any landings to the NGOM APL. Table 8 describes the breakdown of the NGOM TAL for the 2022 and 2023 (default) fishing years.

Table 8--NGOM Scallop Fishery Landing Limits for Fishing Year 2022 and 2023

Landings Limits	2022	2023 ⁽¹⁾
NGOM TAL	661,387 lb (300,000 kg)	504,384 (228,785 kg)
1 percent NGOM ABC for Observers	15,080 lb (6,840 kg)	13,404 (6,080 kg)

RSA Contribution	25,000 lb (11,340 kg)	25,000 lb (11,340 kg)
NGOM Set-Aside	621,307 lb (281,820 kg)	465,980 lb (211,365 kg)
NGOM APL	0 lb (0 kg)	-

¹ The landings limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

5. Scallop Incidental Landings Target TAL. This action proposes a 50,000-lb (22,680-kg) scallop incidental landings target TAL for fishing years 2022 and 2023 to account for mortality from vessels that catch scallops while fishing for other species and ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions

This action allows vessels participating in RSA projects to harvest RSA compensation from the NLS-S-D, CAI, CAII and the open area. However, to reduce bycatch of flatfish on Georges Bank, vessels may only harvest RSA compensation from Closed Area II from June 1, 2022, through August 14, 2022. All vessels are prohibited from harvesting RSA compensation pounds in all other access areas. Vessels are prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project. Finally, Framework 34 prohibits the harvest of RSA from any access areas under default 2023 measures. At the start of 2023, RSA compensation may only be harvested from open areas. The Council will re-evaluate this default prohibition measure in the action that would set final 2023 specifications.

Regulatory Corrections Under Regional Administrator Authority

This proposed rule includes three revisions to address regulatory text that is unnecessary, outdated, or unclear. In addition, this proposed rule includes changes to regulatory text that would allow NMFS to implement measures developed in Amendment 21 to the Atlantic Sea Scallop FMP for fishing year 2022. Specifically, these proposed

changes would implement regulations that expand the scallop industry-funded observer program to monitor directed scallop fishing in the NGOM by using a portion of the NGOM allocation to off-set monitoring costs. These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first revisions, at § 648.11(k)(1), (k)(2)(i), (k)(2)(iii), (k)(5), (k)(5)(i), (k)(5)(i)(C), (k)(5)(ii), and (k)(6) would make changes to the require vessels fishing in the NGOM to participate in the observer program. Amendment 21 expanded the scallop industry-funded observer program to monitor directed scallop fishing in the NGOM by using a portion of the NGOM allocation to off-set monitoring costs. The second revision at §§ 648.53(a)(7) and 648.62(a)(3) would change the term “scallop incidental catch” to “scallop incidental landings” to more accurately describe the catch limit. The third revision at § 648.53(b) would clarify that DAS allocations are determined by applying estimates of open area landings per unit effort projected through the specifications or framework adjustment processes used to set annual allocations and dividing that amount among vessels in the form of DAS calculated. Finally, in paragraphs § 648.59(a)(2) and (b)(3) the terms “scallop rotational closed area” and “scallop rotational access area” are added for consistency throughout the regulations.

Classification

NMFS is issuing this rule pursuant to sections 304(b)(1)(A) of the Magnuson-Stevens Act, which provides specific authority for implementing this action. Pursuant to section 305(d) of the Magnuson-Stevens Act, this action is necessary to carry out the Atlantic Sea Scallop FMP, because to allow NMFS to implement measures developed in Amendment 21 to the Atlantic Sea Scallop FMP for fishing year 2022. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the

Atlantic Sea Scallop FMP and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA has been prepared for Framework 34, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA references and incorporates as applicable, the Framework 34 analyses and the preamble to this proposed rule. A summary of the IRFA follows:

Description of the Reasons Why Action by the Agency is Being Considered and Statement of the Objectives of, and Legal Basis for, this Proposed Rule

This action proposes the management measures and specifications for the Atlantic sea scallop fishery for 2022, with 2023 default measures. A description of the action, why it is being considered, and the legal basis for this action are contained in the Council's Framework 34 document and the preamble of this proposed rule, and are not repeated here.

Description of Projected Reporting, Recordkeeping, and other Compliance Requirements of the Proposed Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements. This proposed rule does not require specific action on behalf of regulated entities other than to ensure they stay within the specifications that would be set.

Federal Rules which may Duplicate, Overlap or Conflict with this Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other Federal laws.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed regulations would affect all vessels with limited access and LAGC scallop permits, and there would be economic impacts to small entities. Those impacts are described in detail in the draft of Framework 34, specifically, in the IRFA (Section 7.2) and in the Economic and Social Impacts section (Section 6.6). Framework 34 (Section 5.6) provides extensive information on the number of vessels that would be affected by the proposed regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**). There were 316 vessels that held full-time limited access permits in 2020, including 250 dredge, 55 small-dredge, and 11 scallop trawl permits. In the same year, there were also 30 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits in 2020. In 2019, NMFS reported that there were a total of 300 IFQ-only permits, with 212 issued and 88 in Confirmation of Permit History. There were a total of 110 NGOM permits issued in 2019. About 102 of the IFQ vessels and 47 NGOM vessels actively fished for scallops in fishing year 2020. The remaining IFQ permit holders likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. Section 6.6 of Framework 34 provides extensive information on the number and size of vessels that would be affected by the proposed regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**).

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than \$11 million annually (see 50 CFR 200.2). Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or

economic dependency. For the purposes of this analysis, “ownership entities” are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an “ownership entity.” For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one “ownership entity,” that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate “ownership entity” for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2020 permits and contains average gross sales associated with those permits for calendar years 2018 through 2020. Matching the potentially impacted 2020 fishing year permits described above (limited access and LAGC IFQ) to calendar year 2020 ownership data results in 177 distinct ownership entities for the LA fleet and 89 distinct ownership entities for the LAGC IFQ fleet. Based on the Small Business Administration guidelines, 170 of the limited access distinct ownership entities and 89 LAGC IFQ entities are categorized as small. Seven limited access entities and no LAGC IFQ entities are categorized as large entities. There were 44 distinct small business entities with NGOM permits in 2020 permits.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council’s preferred alternative (Alternative 3, Sub-option 2) would allocate each full-time limited access vessel 24 open area DAS and 3 access area trips (*i.e.*, 2 CAII trips at 15,000 lb (6,804 kg), 1 NLS-S-D trip at 15,000 lb (6,804 kg) amounting to 45,000 lb (20,412 kg) in fishing year 2022. This is estimated to result in about 31.42

million lb (15,613 mt) of landings after research and observer set-asides are accounted for. The limited access share of 94.5 percent is around 29.69 million lb (13,467 mt). The LAGC IFQ share (5.5 percent allocation for both IFQ-only and limited access vessels with IFQ permits) will be about 1.73 million lb (785 mt). Total landings, including set-asides to support research and observer coverage is projected to be about 34.04 million lb (15,440 mt) (Table 9).

The preferred alternative (Section 4.3.3.3 in Framework 34 (see **ADDRESSES**)) is expected to have negative impacts on the net revenues and profits of small entities regulated by this action in fishing year 2022 (Framework 34) compared to the fishing year 2021 (Framework 33) scenario. The decline in revenue per entity between fishing year 2021 levels and fishing year 2022 is a result of declining allocations between these two fishing years. Projected landings for limited access fleet are expected to decline by about 6 million lb (2,722 mt) in the Framework 34 preferred alternative compared to Framework 33 preferred alternative. As described in the Economic Impacts Section 6.6.1, and summarized in Table 10 below, fleetwide net revenue for the limited access vessels (including revenue from the LAGC IFQ vessels) would be lower for the preferred alternative in Framework 34 (Section 4.3.3.3) by about \$50 million (in 2021 dollars) compared to the preferred alternative in Framework 33. Net revenue for limited access vessels in fishing year 2022 under the Framework 34 preferred alternative would be \$0.29 million lower per entity as compared to Framework 33 preferred alternative in fishing year 2021. Thus, the preferred alternative (Section 4.3.3.3) would have 12.77 percent lower net revenue compared to the Framework 33 preferred alternative (Table 10).

Under the preferred alternative (Section 4.3.3.3), allocations for the LAGC IFQ fishery, including the limited access vessels with IFQ permits, will be about 17.5 percent lower than the allocation that was implemented for fishing year 2021 under Framework

33. In terms of net revenue, this difference is expected to be of similar magnitude and negative for the preferred alternative relative to fishing year 2021 levels. Therefore, the Framework 34 preferred alternative will have negative economic impacts on the LAGC IFQ fishery compared to fishing year 2021 levels (Table 11).

The Council considered three NGOM TAL options for fishing year 2022 that ranged from 559,974 lb (254,003 kg) (Option 1) to 727,525 lb (330,003 kg) (Option 3). All three of the TAL options would result in higher revenues compared to No Action, which are default measures set in Framework 33 (74,000 lb (33,566 kg) TAC). The preferred alternative (Alternative 2, Option 2) would have a slightly higher TAL (661,387 lb (300,003 kg)) compared to the Alternative 2 Option 1, meaning that Option 2 would result in higher revenues than Option 1. When compared to No Action, the higher TAL of Option 2 would also result in higher revenues and economic benefits for entities in this fishery with an estimated increase in net revenues by about 762 percent compared to No Action (Table 12).

Under the sharing arrangement approved for the NGOM Management Area in Amendment 21, Framework 34 would not allocate pounds to the LAGC IFQ or limited access components as part of the APL for fishing year 2022 because the NGOM set-aside did not exceed 800,000 lb (362,878 kg). Therefore, Alternative 2 would not have direct impacts on limited access component, which would receive 29.69 million lb (13,467 mt) allocation in Alternative 2. More research is planned for this area in 2022, which will help to increase the understanding of biomass in the NGOM management area. This will lead better management of the NGOM resource with positive biological and economic impacts over the long-term on both LAGC and limited access vessels.

Economic impacts of Framework 34 preferred alternatives, including fishery specifications, access area trip allocations for the limited access and LAGC IFQ fisheries, NGOM measures, and other measures to reduce fishery impacts are expected to be

negative for the scallop vessels and small business entities compared to the fishing year 2021 baseline implemented through Framework 33. We have determined that the preferred alternative is optimal because it would minimize risks associated with stock biomass uncertainties while protecting small scallops.

Table 9--Short-term Economic Impacts for Fishing Year 2022 Compared with Fishing Year 2021 (Framework 34's Preferred Alternative Projections): Estimated Landings (Mil. lb), Revenues, Producer Surplus, and Total Economic Benefits (in 2021 current dollars, Mil. dollars)

Values/ RUN	Unit	4.3.1_NA	4.3.2.1	4.3.2.2	4.3.2_22 DAS	4.3.2_24 DAS	4.3.3.1	4.3.3.2	4.3.3_22 DAS	4.3.3_24 DAS (Preferred)	SQ_4.3.4	FW33_PREFERRED Alternative (in 2021 dollars)
Landings	mil lb	19.94	31.67	36.03	33.15	34.61	31.65	36.04	33.14	34.04	33.69	40.05
	mil kg	9.04	14.37	16.34	15.04	15.70	14.36	16.35	15.03	15.44	15.28	18.17
Revenue	mil \$	\$269.63	\$409.61	\$460.18	\$427.02	\$443.91	\$409.33	\$460.40	\$426.91	\$437.37	\$434.67	\$473.87
Producer Surplus	mil \$	\$202.61	\$327.45	\$370.65	\$342.39	\$356.83	\$327.17	\$370.86	\$342.29	\$351.25	\$348.20	\$373.44
Total Economic Benefits	mil \$	\$206.81	\$339.42	\$386.50	\$355.63	\$371.36	\$339.13	\$386.72	\$355.52	\$365.27	\$361.94	\$415.58
*Net Values or Difference from Fishing Year 2021 (Framework 33's Preferred Alternative projection) values:												
Landings	mil lb	(20.10)	(8.38)	(4.01)	(6.89)	(5.44)	(8.40)	(4.00)	(6.90)	(6.01)	(6.36)	-
	mil kg	(9.12)	(3.80)	(1.82)	(3.13)	(2.47)	(3.81)	(1.81)	(3.13)	(2.73)	(2.88)	-
Revenue	mil \$	\$(204.25)	\$(64.26)	\$(13.69)	\$(46.86)	\$(29.96)	\$(64.54)	\$(13.47)	\$(46.96)	\$(36.50)	\$(39.20)	\$-
Producer Surplus (PS)	mil \$	\$(170.83)	\$(45.99)	\$(2.79)	\$(31.04)	\$(16.60)	\$(46.26)	\$(2.57)	\$(31.14)	\$(22.19)	\$(25.24)	\$-
Total Economic Benefits (CS+PS)	mil \$	\$(208.77)	\$(76.15)	\$(29.08)	\$(59.95)	\$(44.21)	\$(76.45)	\$(28.86)	\$(60.06)	\$(50.31)	\$(53.63)	\$-

* A negative sign indicates a lower value for a Framework 34 alternative compared to the Framework 33's preferred alternative.

Table 10--Net Scallop Revenue for Limited Access Vessels in Fishing Year 2022 and Percent Change from the Fishing Year 2021 (revenues in 2021 dollars)

	Unit	Framework 34 Alternatives (Economic Values in million dollars (in 2021\$))										FW33's Preferred Alternative
		4.3.1	4.3.2.1	4.3.2.2	4.3.2_22 DAS	4.3.2_24 DAS	4.3.3.1	4.3.3.2	4.3.3_22 DAS	4.3.3.3 (FW34Pref)	4.3.4	(in 2021\$)
Estimated scallop APL landings	mil lb	19.941	31.667	36.030	33.151	34.606	31.650	36.043	33.142	34.039	33.687	40.045
	mil kg	9.05	14.36	16.34	15.04	15.70	14.36	16.35	15.03	15.44	15.28	9.05
Estimated LA scallop	mil lb	16.37	27.45	31.57	28.85	30.23	27.43	31.58	28.84	29.69	29.36	35.978

landings (94.5% net of setasides)	mil kg	7.43	12.45	14.32	13.09	13.71	12.44	14.32	13.08	13.47	13.32	16.32
No. of Entities (Average in 2018-2020) both small and large	Counts	177	177	177	177	177	177	177	177	177	177	168
Estimated revenues for scallop APL	mil dollars	\$269.63	\$409.61	\$460.18	\$427.02	\$443.91	\$409.33	\$460.40	\$426.91	\$437.37	\$434.67	\$473.87
Estimated LA revenues from scallop	mil dollars	\$221.31	\$355.04	\$403.23	\$371.63	\$387.72	\$354.78	\$403.44	\$371.52	\$381.49	\$378.80	\$425.74
Estimated Net Revenue for scallop APL	mil dollars	\$251.783	\$382.655	\$428.790	\$398.581	\$413.997	\$382.379	\$429.007	\$398.479	\$408.033	\$405.121	\$431.02
Estimated LA net revenue from scallop	mil dollars	\$206.66	\$331.68	\$375.73	\$346.88	\$361.59	\$331.42	\$375.93	\$346.78	\$355.90	\$353.05	\$387.24
Net scallop revenue per Entity	mil dollars	\$1.168	\$1.874	\$2.123	\$1.960	\$2.043	\$1.872	\$2.124	\$1.959	\$2.011	\$1.995	\$2.305
Percent change in net revenue compared to SQ (FW33)	Percent	-49.35%	-18.70%	-7.91%	-14.98%	-11.37%	-18.77%	-7.86%	-15.00%	-12.77%	-13.47%	0.00%

Note: Landings and net revenues net of set asides, such as research set aside scallop, etc.

Table 11--Impacts of the LAGC IFQ Allocation for 2022 Fishing Year

Sections		4.3.1	4.3.2.1	4.3.2 22 DAS	4.3.2 24 DAS	4.3.2.2	4.3.3.1	4.3.3 22 DAS	4.3.3.3 (FW34 Pref.)	4.3.3.2	4.3.4	FW33's Preferred Alternative
Descriptions												
Allocation for IFQ only vessels (5%)	lb	865,976	1,452,295	1,526,481	1,599,233	1,670,443	1,451,413	1,526,040	1,570,904	1,671,104	1,553,267	1,903,581
	kg	392,804	658,757	692,407	725,407	757,708	658,357	692,207	712,557	758,008	704,557	863,459
Allocation for LA vessels with IFQ permits (0.5%)	lb	86,598	145,230	152,648	159,923	167,044	145,141	152,604	157,090	167,110	155,327	190,358
	kg	39,281	65,876	69,241	72,541	75,771	65,836	69,221	71,256	75,801	70,456	86,346
Total Allocation for IFQ fishery (5.5%)	lb	952,573	1,597,525	1,679,129	1,759,157	1,837,487	1,596,555	1,678,644	1,727,994	1,838,214	1,708,594	2,093,940
	kg	432,084	724,633	761,648	797,948	833,479	724,193	761,428	783,813	833,808	775,013	949,805
Percent change in estimated landings (and expected revenue) per business entity from SQ (FW33 preferred alternative)		-54.5%	-23.7%	-19.8%	-16.0%	-12.2%	-23.8%	-19.8%	-17.5%	-12.2%	-18.4%	0.0%

Table 12-- Impacts of the Preferred Alternative 2 Option 2 and Other Alternatives for NGOM Scallop Fishery (2021 fishing year and monetary values in 2020 dollars)

	Alternative 1				Alternative 2			
	(No Action)		Option 1		Option 2(Preferred)		Option 3	
			(F=0.15)		(F=0.18)		(F=0.20)	
	lb	kg	lb	kg	lb	kg	lb	kg
2022 Total Allowable Landings	74,000	33,566	559,974	254,003	661,387	300,003	727,525	330,003

▪ 1% NGOM ABC for Observers	-	-	15,080	6,840	15,080	6,840	15,080	6,840
▪ 2022 RSA Contribution	2,000	907	25,000	11,340	25,000	11,340	25,000	11,340
▪ 2022 NGOM Set-Aside	72,000	32,659	519,895	235,823	621,307	281,823	687,446	311,823
Impacts of the NGOM Set-Aside:								
▪ Estimated LAGC revenue	\$925,560		\$6,683,250		\$7,986,901		\$8,837,118	
▪ DAS	360		2,599		3,107		3,437	
▪ Trip costs (\$529 per DAS)	\$190,404		\$1,374,862		\$1,643,046		\$1,817,951	
▪ Net revenue	\$735,156		\$5,308,388		\$6,343,855		\$7,019,167	
▪ Net revenue net of No Action	-		\$4,573,232		\$5,608,699		\$6,284,011	

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 8, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

2. In § 648.11,

- a. Revise paragraphs (k)(1) and (k)(2)(i);
- b. Add paragraph (k)(2)(iii);
- c. Revise paragraphs (k)(5) introductory text and (k)(5)(i) introductory text;
- d. Add paragraph (k)(5)(i)(C); and
- e. Revise paragraphs (k)(5)(ii) and (k)(6).

The revisions and additions read as follows:

§ 648.11 Monitoring coverage.

* * * * *

(k) * * *

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access, LAGC IFQ, and LAGC NGOM permits are required to comply with the additional notification requirements specified in paragraph (k)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area, Open Area, or NGOM as specified in paragraph (k)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (k)(3) and (k)(4)(ii) of this section.

* * * * *

(2) * * *

(i) *Limited access vessels.* Limited access vessel owners, operators, or managers shall notify NMFS by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area, NGOM, or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

* * * * *

(iii) *LAGC vessels fishing NGOM.* LAGC IFQ and NGOM vessel owners, operators, or managers must notify the NMFS by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start a NGOM scallop trip and must include the port of departure. NMFS may select up to two trips to be

covered by an observer during the specified week (Sun-Sat). The owner, operator, or vessel manager must notify NMFS of any trip plan changes at least 48 hr prior to vessel departure.

* * * * *

(5) *Cost of coverage.* Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for limited access open area scallop trips or additional scallop catch per day for limited access Sea Scallop Access Area trips or additional catch per open area or access area trip for LAGC IFQ trips or additional catch per NGOM trip in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS or IFQ trip or NGOM trip consistent with paragraphs (k)(5)(i)(A) and (B), respectively, of this section.

* * * * *

(C) *NGOM scallop trips.* For purposes of determining the daily rate in the NGOM for observed scallop trips on a limited access or LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where “day” is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops on Sea Scallop Access Area, LAGC IFQ, and NGOM trips based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. NMFS shall notify vessel owners and observer providers of any adjustments.

* * * * *

(6) *Coverage and cost requirements.* When the available set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

* * * * *

Subpart D— Management Measures for the Atlantic Sea Scallop Fishery

3. In § 648.53, revise paragraphs (a)(7), (a)(9), (b)(1), and (b)(3) to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(7) *Scallop incidental landings target TAL.* The annual incidental landings target TAL is the catch available for harvest for vessels with incidental catch scallop permits. This incidental catch target will be removed from the ABC/ACL defined in paragraph (a)(3) of this section prior to establishing the limited access and LAGC IFQ sub-ACLs and sub-ACTs defined in paragraphs (a)(5) and (6) of this section.

* * * * *

(9) *Scallop fishery catch limits.* The following catch limits will be effective for the 2022 and 2023 fishing years:

Table 1 to Paragraph (a)(9)--Scallop Fishery Catch Limits

Catch limits	2022 (mt)	2023 (mt) ¹
OFL	38,271	34,941
ABC/ACL (discards removed)	25,724	23,200
Incidental Landings	23	23
RSA	578	578
Observer Set-Aside	257	232
NGOM Set-Aside	282	221
ACL for fishery	24,865	22,367
Limited Access ACL	23,498	21,137
LAGC Total ACL	1,368	1,230
LAGC IFQ ACL (5 percent of ACL)	1,243	1,118
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	124	112
Limited Access ACT	20,365	18,318
APL (after set-asides removed)	14,251	(1)
Limited Access APL (94.5 percent of APL)	13,467	(1)
Total IFQ Annual Allocation (5.5 percent of APL) ²	784	588
LAGC IFQ Annual Allocation (5 percent of APL) ²	713	534
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) ²	71	53

¹ The catch limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2023 that will be based on the 2022 annual scallop surveys. The 2023 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

² As specified in paragraph (a)(6)(iii)(B) of this section, the 2023 IFQ annual allocations are set at 75 percent of the 2022 IFQ Annual Allocations.

* * * * *

(b) * * *

(1) *DAS allocations.* DAS allocations shall be determined by distributing the portion of the limited access APL defined in paragraph (a)(3) of this section, as reduced by access area allocations defined in § 648.59, by applying estimates of open area landings per unit effort (LPUE) projected through the specifications or framework adjustment processes used to set annual allocations and dividing that amount among vessels in the form of DAS calculated.

* * * * *

(3) *DAS allocations*. The DAS allocations for limited access scallop vessels for fishing years 2022 and 2023 are as follows:

Table 2 to Paragraph (b)(3) - Scallop Open Area DAS Allocations

Permit category	2022	2023 ¹
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

¹ The DAS allocations for the 2023 fishing year are subject to change through a future specifications action or framework adjustment. The 2023 DAS allocations are set at 75 percent of the 2022 allocation as a precautionary measure.

* * * * *

4. In § 648.59, revise paragraphs (a)(2) and (3), (b)(3) introductory text, (b)(3)(i)(B), (b)(3)(ii), (c), (e), and (g)(3)(v) to read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(a) * * *

(2) *Transiting a Scallop Rotational Closed Area*. No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II-East Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(3) *Transiting a Scallop Rotational Access Area*. Any sea scallop vessel that has not declared a trip into the Scallop Access Area Program may enter a Scallop Access

Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(b)(1), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

(b) * * *

(3) *Scallop Rotational Access Area Allocations -*

(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2022 and 2023 fishing years:

(1) *Full-time vessels.*

(i) For a full-time limited access vessel, the possession limit and allocations are:

Table 1 to Paragraph (b)(3)(i)(B)(1)(i)

Rotational access area	Scallop possession limit	2022 Scallop allocation	2023 Scallop allocation (default)
Closed Area II	15,000 lb (6,804 kg) per trip	30,000 lb (13,608 kg)	15,000 lb (6,804 kg).
Nantucket Lightship-South-Deep	15,000 lb (6,804 kg) per trip	15,000 lb (6,804 kg)	0 lb (0 kg).
Total		45,000 lb (20,412 kg)	15,000 lb (6,804 kg).

(ii) [Reserved]

(2) *Part-time vessels.*

(i) For a part-time limited access vessel, the possession limit and allocations are as follows:

Table 2 to Paragraph (b)(3)(i)(B)(2)(i)

Rotational access area	Scallop possession limit	2022 Scallop allocation	2023 Scallop allocation (default)
Closed Area II	9,000 lb (4,082 kg) per trip	9,000 lb (4,082 kg)	9,000 lb (4,082 kg)
Nantucket Lightship-South-Deep	9,000 lb (4,082 kg) per trip	9,000 lb (4,082 kg)	0 lb (0 kg)
Total		18,000 lb (8,165 kg)	9,000 lb (4,082 kg)

(ii) [Reserved]

(3) *Occasional limited access vessels.*

(i) For the 2022 fishing year only, an occasional limited access vessel is allocated 3,750 lb (1,701 kg) of scallops with a trip possession limit at 3,750 lb of scallops per trip (1,701 kg per trip). Occasional limited access vessels may harvest the 3,750 lb (1,701 kg) allocation from either the Nantucket Lightship-South-Deep or Closed Area II Access Area.

(ii) For the 2023 fishing year, occasional limited access vessels are allocated 1,250 lb (567 kg) of scallops in Closed Area II Access Area with a trip possession limit of 1,250 lb of scallops per trip (567 kg per trip).

* * * * *

(ii) *Limited access vessels' one-for-one area access allocation exchanges -*

(A) *Full-time limited access vessels.*

(1) The owner of a vessel issued a full-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only in 7,500-lb (3,402-kg) increments. For example, a full-time vessel may exchange 7,500 lb (3,402 kg) from one access area for 7,500 lb (3,402 kg) allocated

to another full-time vessel for another access area. Further, a full-time vessel may exchange 15,000 lb (6,804 kg) from one access area for 15,000 lb (6,804 kg) allocated to another full-time vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations in 7,500-lb (3,402-kg) increments between two or more vessels of the same permit category under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(2) [Reserved]

(B) *Part-time limited access vessels.* The owner of a vessel issued a part-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another part-time vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B)(2) of this section. For example, if the access area trip possession limit for part-time limited access vessels is 9,000 lb (4,082 kg), a part-time limited access vessel may exchange no more or less than

9,000 lb (4,082 kg), from one access area for no more or less than 9,000 lb (4,082 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time limited access vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A part-time limited access vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

* * * * *

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Closed Area II Access Area at the end of fishing year 2021,

that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Closed Area II Access Area is open in fishing year 2022 (April 1, 2022 through May 30, 2023).

* * * * *

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas*. Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2022 and 2023 are:

(1) 2022: Nantucket Lightship-South-Deep, Closed Area I, and Closed Area II Scallop Rotational Areas.

(i) For fishing year 2022, vessels may only harvest RSA compensation from Closed Area II from June 1, 2022 through August 14, 2022.

(ii) [Reserved]

(2) 2023: No access areas.

* * * * *

(g) * * *

(3) * * *

(v) *LAGC IFQ access area allocations*. The following LAGC IFQ access area trip allocations will be effective for the 2022 and 2023 fishing years:

Table 3 to Paragraph (g)(3)(v)

Scallop access area	2022	2023 ¹
Closed Area I	714	357
Nantucket Lightship-South-Deep	357	0
Total	1,071	357

¹ The LAGC IFQ access area trip allocations for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

* * * * *

5. In § 648.60,

- a. Revise paragraph (a);
- b. Remove and reserve paragraph (b)(2)(ii); and
- c. Add paragraph (i).

The revisions and additions read as follows:

§ 648.60 Sea Scallop Rotational Areas.

(a) *New York Bight Scallop Rotational Area.* The New York Bight Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Table 1 to Paragraph (a)

Point	N latitude	W longitude
NYB1	40°00'	73°20'
NYB2	40°00'	72°30'
NYB3	39°20'	72°30'
NYB4	39°20'	73°20'
NYB1	40°00'	73°20'

* * * * *

(i) *Nantucket Lightship-West Scallop Rotational Area.* The Nantucket Lightship-West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Table 9 to Paragraph (i)

Point	N latitude	W longitude
NLSW1	40° 43.44'	70° 20'
NLSW2	40° 43.44'	70° 00'
NLSW3	40° 43.44'	69° 30'

Point	N latitude	W longitude
NLSW4	40° 20'	69° 30'
NLSW5	40° 20'	70° 00'
NLSW6	40° 26.63'	70° 20'
NLSW1	40° 43.44'	70° 20'

* * * * *

6. In § 648.62,

- a. Revise paragraphs (a)(2) and (3);
- b. Remove and reserve paragraph (a)(4);
- c. Revise paragraphs (a)(5) and (b); and
- d. Remove paragraph (e).

The revisions read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a) * * *

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the NGOM Set-Aside, as defined in § 648.53(a)(8)(iii), and specified in paragraph (b)(1) of this section, when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit fishes exclusively in state waters within the NGOM, scallop landings from those trips will not be deducted from the NGOM Set-Aside.

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area against the NGOM Set-Aside, as defined in § 648.53(a)(8)(iii), shall be deducted from NGOM Set-Aside specified in paragraph (b)(1) in this section. Scallop landings by LAGC IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by vessels with incidental permits shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

* * * * *

(5) Scallop landings by all vessels issued scallop permits and fishing in the NGOM under the scallop RSA program (as specified in § 648.56) shall be deducted from the overall RSA allocation.

(b) NGOM Scallop Fishery Landings Limits.

(1) The following landings limits will be effective for the NGOM for the 2022 and 2023 fishing years.

Table 1 to Paragraph (b)(1)

Landings Limits	2022	2023⁽¹⁾
NGOM TAL	661,387 lb (300,000 kg)	504,384 (228,785 kg)
1 percent NGOM ABC for Observers	15,080 lb (6,840 kg)	13,404 (6,080 kg)
RSA Contribution	25,000 lb (11,340 kg)	25,000 lb (11,340 kg)
NGOM Set-Aside	621,307 lb (281,820 kg)	465,980 lb (211,365 kg)
NGOM APL	0 lb (0 kg)	-

¹ The landings limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued an LAGC scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the **Federal Register** that the NGOM Set-Aside in accordance with paragraph (b)(1) of this section has been reached, unless the vessel is participating in the scallop RSA program as specified in § 648.56 and has been allocated NGOM RSA pounds. Once the NGOM Set-Aside is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM, unless participating in the state waters exemption program as specified in § 648.54. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

(3) If the NGOM Set-Aside is exceeded, the amount of NGOM scallop landings in excess of the NGOM Set-Aside specified in paragraph (b)(1) of this section shall be deducted from the NGOM Set-Aside for the subsequent fishing year, or, as soon as practicable, once scallop landings data for the NGOM management area is available.

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